

9-22-1964

64/09/22 Defendant's Bill of Exceptions - part 3

John T. Corrigan

Louis Stokes

Reuben M. Payne

How does access to this work benefit you? Let us know!

Follow this and additional works at: https://engagedscholarship.csuohio.edu/terryvohio_cuyahogacountycourtcommonpleasdocs

 Part of the [Constitutional Law Commons](#)

Recommended Citation

Corrigan, John T.; Stokes, Louis; and Payne, Reuben M., "64/09/22 Defendant's Bill of Exceptions - part 3" (1964). *Cuyahoga County Court of Common Pleas*. 4.
https://engagedscholarship.csuohio.edu/terryvohio_cuyahogacountycourtcommonpleasdocs/4

This Article is brought to you for free and open access by the Court Documents at EngagedScholarship@CSU. It has been accepted for inclusion in Cuyahoga County Court of Common Pleas by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

A Oh, I imagine around twelve or fifteen minutes, something in that vicinity, ten to fifteen minutes.

Q During this time how many trips would you say each of them made away from the corner over to the two stores you have referred to?

A Oh, I would say about four trips, three to four trips, maybe four to five, I didn't count them.

Q Are you talking about each person?

A Well, between them, between the two of them, maybe half a dozen trips, maybe a little more, it might be a little less. I don't know, I didn't count the trips.

Q These trips would be a matter of this fellow walking over, looking into each one of these stores, you don't know which --

A That's right.

Q -- and then walking back to where the other stood, is that correct?

A That's right.

Q There was nothing unusual about their dress, was there, their appearance?

A No.

Q And both men had on topcoats?

A That's right.

Q Were they wearing a hat?

A To be truthful with you I don't remember.

Q Now, when you saw this white man come over and talk to the two of them, there at the corner of Huron and 14th, did you know this white man?

A No, I didn't.

Q You had no information with reference to this white man?

A No information on anything that I -- on anything that I seen, anything that I seen I had no information whatsoever on.

Q Now, you have described their leaving Huron and Euclid and walking west on Euclid?

A That's right.

Q Was there anything unusual about the manner in which they walked down Euclid?

A No, they walked in a natural gait.

Q And how long would you say it took them to get from the point where they were at Huron and Euclid down to Zucker's?

A Oh, I imagine it would take a minute.

Q Now, was this white fellow already standing in front of Zucker's when they got there?

A That's right.

Q You had left your spot at Rogoff's, is that it, where you were standing in the doorway?

A Yes, when I come across the street.

Q And you were following behind them now?

A Yes, but I run across the street.

Q You ran across the street?

A That's right.

Q But they were walking?

A That's right, and then when I -- I walked about 20 feet, maybe 25 feet behind them.

Q How long were they standing in front of Zucker's talking to this white person when you went up to them?

A It couldn't be between -- between a minute and two minutes, maybe less than that. I couldn't say.

Q Can you describe for us the manner in which the three men were standing in front of Zucker's?

A The white man was at the easterly end of the display window. Chilton was in the middle. And the other man, Terry, was on the west side of Chilton.

Q The three of them were just standing there talking?

A That's right.

Q You were in plain clothes that day, weren't you?

A That's correct.

Q By plain clothes we mean in regular dress?

A That's right.

Q When you identified yourself as a police officer, did you take out your badge?

A No, I did not.

Q In what manner did you identify yourself as a police officer?

A I said, "I am a police officer."

Q But you showed no identification?

A No, I showed no identification.

Q After saying, "I am a police officer," what did you next say to these men?

A I said, well, "What is your name, your name and your name?" and they mumbled something. I don't remember what the names were that they mumbled. They said something but I don't recall what it was at that time.

Q Then what is the very next thing that was said or happened?

A The next thing I took Terry and put him in front of me, and we were both facing the other two men.

Q By taking Terry and putting him in front of you, did you have to put your hands on him?

A Yes, I did.

Q Would it be fair to say that you grabbed him with both of your hands, would that be fair?

A Well, I wouldn't say. I just put him -- I don't say I went at him like that and grabbed him. I just took him and put him in front of me.

Q But in doing so you had to touch him with both your hands?

A I imagine I touched him with both of my hands, that's right.

Q What you actually did, you completely reversed his

position that he was standing in, because you turned him around as to have his back to you?

A That's right.

Q Then you say you tapped him down?

A That's right.

Q By tapping him down, do you mean that you patted on and about his body with your hands?

A On the outer part of his body, on the outer part of his clothing.

Q And when you felt this weapon, you then removed his coat from his body, didn't you?

A No, sir, I did not. I put my hand in and I felt a handle of a weapon, and I couldn't get the weapon out of the inside pocket, and I took the coat off.

Q You removed the coat from Terry's body, didn't you?

A That's right, that's right.

Q Now, all of this is taking place out on Euclid Avenue?

A That's right.

Q With people passing by?

A Well, naturally.

Q Now, when we talk about Zucker's Store, we are getting close to Ninth and Euclid, aren't we?

A Well, it is about 1100, 1120, well, it is a little distance from Ninth Street.

Q That is a pretty heavily populated area, isn't it, sir?

A Euclid and Ninth, yes.

Q Now, did you ask them to go into the store, or did you order them into the store?

A I ordered them into the store.

Q As a result of your order, did these men follow your order?

A They did.

Q Now, had you at that point drawn your gun?

A No. I had it handy.

Q At that point, had anyone been placed under arrest, and by that point I have in mind these three men being ordered into Zucker's, at that point had anyone been placed under arrest by you?

A Before I made the second search, when I entered that store, I informed -- I hollered out to the man in the store, "Call the wagon." That was enough to say that they were under arrest.

Q When did this occur now?

A Pardon?

Q When did this occur?

A When I first brought the men, when they first went in there, after I got the first gun and I ordered them in, and at that time when I was going in, as soon as I told them to face east and put their hands out, I told him to call the wagon before I made the second search.

Q This is after you had searched Terry but before you had searched Chilton and Katz?

MR. PAYNE: Objection. Just a minute.

THE COURT: What is your objection?

MR. PAYNE: My objection, your Honor, is that the testimony of Detective McFadden described on direct examination was that he tapped them down. My objection is to the use of the terminology.

THE COURT: He described what he had stated, but the Detective sort of interchanges the word searching.

MR. PAYNE: I am aware of that, and I do want to keep the record straight since the officer --

THE COURT: The Court is aware.

MR. PAYNE: I acknowledge to the Court that he has used them interchangeably.

THE COURT: The Court is aware of how he described it, and I am fully aware that the Detective feels a search and a tapping can be used interchangeably. The Court

has a different feeling.

MR. STOKES: I have this statement, that he tapped him down first and then searched him.

Has a ruling been made?

MR. PAYNE: I think he was waiting on an affirmative ruling on the objection, your Honor.

THE COURT: Well, the objection is overruled.

MR. STOKES: May we have the question read back, please?

THE COURT: Read the question.

(Following question was read by the reporter:)

"This is after you had searched Terry but before you had searched Chilton and Katz?"

A Are you referring to the call for the wagon, are you referring to the arrest?

Q Yes, the arrest.

A When I entered the store, after the search was made and the gun found on Terry, when I entered the store I informed them to call the wagon.

Q Well, by calling the wagon, what do we understand that to mean to you?

A It means an arrest.

Q Whom were you arresting?

A I am arresting the whole three of them.

Q Detective McFadden, you testified approximately a week ago in this very courtroom before this same judge on a motion to suppress, didn't you, sir?

A That's right.

Q And at that time do you recall that I asked you this question, and you gave this answer, "At what point did you consider them to be under arrest?" And you said, "When I ordered the wagon," didn't you?

A That's right.

Q Do you recall that you testified in that matter that you told the store people to order the wagon after you had searched Chilton and Katz up against the wall in Zucker's Store, do you recall that testimony, sir?

A I don't remember.

Q Well, do you recall that in that testimony you said after entering the store you ordered the three men up against the wall?

A Yes.

Q Do you recall that you said, "I then patted Chilton down, and I felt a gun in his left topcoat pocket and I reached in his pocket and took the gun out," do you recall that?

A That's right.

Q You said, "I then searched Katz and I found nothing"?

A That's right.

Q "And that at this point I ordered the wagon," do you recall that?

A I don't recall. I remember saying something about calling the wagon, but whether it was at that point or whether it was at the other I don't recall.

But I remember distinctly when I went in there, after I got that first gun and got those men in there, I told them to call the wagon.

It would be a natural thing for me to do, I got three men.

Q Well, you tell the Court as you walked through the door and you said, "Order the wagon," and as you further say you were then arresting Chilton, Terry and Katz --

A That's right.

Q What were Chilton and Katz being arrested for?

MR. PAYNE: I am going to enter an objection at this time, your Honor.

THE COURT: What is the basis for your objection?

MR. PAYNE: As a matter of law, your Honor, I think the subsequent following of this matter will show that these men were arrested initially and charged with investigation and then to carrying concealed weapons.

THE COURT: Mr. Stokes, you
may continue.

MR. STOKES: Read the question..

(Following question was read by the reporter:)

"What were Chilton and Katz being
arrested for?"

A Association.

Q Is that your complete answer, sir?

A Well, they were found in company with a man with a
revolver.

Q So then at that point they were being arrested for
association?

A They were being arrested, yes, period.

Q Do you know of any charge under Ohio Law entitled
"Association"?

MR. PAYNE: I must object now.

THE COURT: Mr. Stokes, I think
we have gone into this question. You are questioning
the officer on questions of law, whereas the questions
should be directed as to the facts and circumstances
pertaining to the arrest.

As I have indicated, the question as to
what constitutes an arrest is not for the officer's
determination, but is strictly based upon the facts
that occurred, and the Court will determine whether

an arrest actually occurred from those facts. It is not what was in his mind as to when the arrest occurred.

MR. STOKES: I think I know what the Court means with reference to certain acts at that point, regardless of what the officer calls it, would probably constitute an arrest.

But I think it is important and bearing upon this whole question as to what this officer actually did, and his reasons for having done so certainly bear upon this whole question.

THE COURT: Well, you may proceed.

MR. STOKES: Thank you, your Honor. Would the reporter please read that question back, please?

MR. PAYNE: Pardon me, your Honor, if it is to go back to the same question I would have to renew this same objection.

I have no problem in my own mind of Mr. Stokes going in, as he stated, as to what the officer actually did.

But when it comes to questioning the officer on that which is a matter of law, and I

think the last question related to the fact as to whether the officer knew of any law on the books pertaining to association, or something of that nature, I think is improper, because first of all it has ^{not} been established that this officer has training and background in the law to be so qualified to give such an opinion in this way.

I think it is purely a matter of law.

Now, his actions and conduct I admit are important.

THE COURT:

Let me say this to you, Mr. Payne, if this were a matter before the jury, if counsel objected or even if counsel would not object, in light of the fact that I have indicated in my previous decision on the question of the motion to suppress, that I felt this to be a most interesting and novel question pertaining to the circumstances in this case, and what occurred on the basis of the so-called tapping, stopping and tapping, and I indicated to counsel that I would like to see the matter of the frisking by the police officer be determined, so that police officers will know what they can do and what they cannot do.

MR. PAYNE:

I take it then

that the Court is of mind to allow a wide latitude?

THE COURT: Therefore I am
permitting wide latitude in that direction so
Counsel will feel and defendant will feel that
everything that they desire to present to the Court
has been presented.

MR. PAYNE: All right, your
Honor.

THE COURT: You may proceed.

MR. STOKES: Would you repeat
that last question for us, please, Mr. Reporter?
(Following question was read by the reporter:)

"Do you know of any charge under Ohio
law entitled 'Association'?"

THE COURT: You may answer
that yes or no, Mr. McFadden.

A As far as I know, I don't know.

THE COURT: You never graduated
from law school, did you?

THE WITNESS: No, sir.

Q Detective McFadden, were all three of these men taken
to the police station?

A Pardon?

Q Were all three men taken to the police station?

A They were.

Q Nothing was found in the search of Katz, was there?

A That's right.

Q But he was taken to the police station, wasn't he?

A That's right.

Q And as a result of this arrest which you made that day of Karl Katz, has he from that date until now ever been charged with anything as a result of that arrest?

A He was.

Q What was he charged with?

A Being a suspicious person.

Q Is that a misdemeanor or felony?

A Misdemeanor.

Q By the way, have you had occasion to ascertain whether or not this gun will shoot?

A If I had the occasion to ask him where he got it?

Q No, ascertain whether or not this gun will shoot?

A No.

Q At what point in this whole thing did you take your gun out?

A At what point was it?

Q Yes, at what point during this arrest did you actually pull your gun out?

A I never had to pull it.

Q You never pulled yours?

A No.

Q Detective McFadden, you held ^{these} three men in the store while you waited for the wagon to come, didn't you?

A Did I what?

Q You held these three men in the store there?

A That's right, I held them at bay with one of their guns.

Q You were holding one of their guns on them?

A That's right.

MR. STOKES: I have no further questions.

RE-DIRECT EXAMINATION OF DETECTIVE MARTIN McFADDEN

By Mr. Payne:

Q Detective McFadden, you indicated that the person by the name of Katz was charged with the offense of being a suspicious person, is that correct?

A That's right.

Q Do you know whether John Terry or Richard Chilton were charged with that offense prior to being charged with the offense of carrying a concealed weapon?

MR. STOKES: Objection.

THE COURT: He may answer.

A No.

THE COURT: I will indicate the basis --

A They were charged with --

THE COURT:

Just a minute.

Let me give the basis for my ruling, in light of the fact that the door was opened by you on that particular question.

A They weren't charged with being suspicious persons. Just charged with carrying concealed weapons, both.

Q Detective McFadden, directing your attention back to the time that you walked up to these men in front of Zucker's, you indicated that when you first walked up to them and you asked them their names, that you were facing them all at that time, is that correct?

A That's correct.

Q Then you turned John Terry around, having him face the other two men, and you were facing the other two men, is that correct?

A That's right.

Q Detective McFadden, can you tell us why you turned John Terry around facing the other two men, with you behind him?

MR. STOKES:

Objection.

THE COURT:

You may answer.

A Due to my observation, the observation on Huron Road of these two men, I felt as though they were going to pull a stick-up and they may have a gun.

Q Now, after finding the gun on John Terry, and then ordering all three into the store, you testified that you then patted

Richard Chilton down?

A That's right.

Q Tell us why you patted Richard Chilton down?

MR. STOKES: Objection.

THE COURT: He may answer.

A For the same reason I patted Terry down.

Q And that was --

A That was on account of the observation of both of them walking up and down Huron Road and peering into windows, and I suspected they were waiting for an opportunity to pull a stick-up.

MR. STOKES: I am going to object to that answer as not being responsive, and ask that it be stricken.

THE COURT: Objection overruled. You may have an exception.

Q Now, after taking them into custody, did you have any conversation with Richard Chilton?

MR. STOKES: Objection.

THE COURT: He may answer.

A Yes.

Q Will you tell us what conversation you had with Richard Chilton?

MR. STOKES: Objection.

THE COURT: What is the basis

of your objection?

MR. STOKES: Well, we now have a man who is in the police station and who is under accusation of having committed a crime.

We have no information here that he has been afforded his constitutional right to be afforded legal counsel.

I would think in light of the Escabito decision that present questions and answers being put to this witness are highly improper and highly prejudicial.

THE COURT: Does the Escabito case go as far as you are trying to indicate to the Court?

MR. STOKES: Well, we don't know. There has been no foundation laid here.

MR. PAYNE: Yes, we do know, your Honor, that the Escabito case does not go that far.

MR. STOKES: Well, you mean that you can just in a courtroom start asking police officers questions with reference to what conversation took place? And you don't have to lay a foundation for it?

MR. PAYNE: Mr. Stokes, certainly

on the pure basis of the question you asked now, certainly the answer to that question I think you and I both know and are aware of. But that is not the question.

The question is whether the Escabito case will cover the present situation and the facts as outlined here thus far. The Escabito case is limited only at this time to the facts of that particular situation, and we have no facts here which would take this case into the ruling of the Escabito case.

THE COURT: Will you read the question as propounded by the prosecutor?
(Last question was read by the reporter.)

THE COURT: I will overrule your objection. You may answer. You may have an exception, Mr. Stokes.

MR. STOKES: All right.

A I talked to him with reference to the gun and asked him where he got it.

He said he found it on East 12th Street between Huron Road and Euclid, and right alongside Halle Brothers, that it was in a cellophane -- that the two guns were in a cellophane bag, and then another paper bag -- the cellophane paper with the guns were inserted into a paper bag.

He stated that he found in this bag --

MR. STOKES: I am going to object to this. There was another question before him.

THE COURT: Objection sustained.

Q Will you continue to relate what further conversation you had with the defendant Chilton?

MR. STOKES: Show my continuing objection, your Honor.

THE COURT: Objection overruled.

You may have your exception.

A I asked him why, what were they doing, what were you and Terry doing walking up and down on Huron Road in front of those two stores, stopping in front of those stores.

He said he was looking for a pawn shop to sell the gun.

I asked him if it was loaded, and he said he didn't know.

He was then taken down for a statement.

MR. STOKES: Objection.

THE COURT: Just a moment.

Objection sustained.

Q After having that conversation with defendant Chilton what if anything did you do next?

A I took him down to the statement room.

Q Who was present when you took him to the statement room?

A Well, the man that took the statement, the stenographer that took the statement.

Q And what is his function or purpose?

A He takes the statement as this man gives it.

Q Now, prior to asking this defendant Richard Chilton any question, was he in any way or in any manner advised of any of his rights?

A He was advised of his constitutional --

Q Yes or no?

A Yes.

Q Detective McFadden, can you recall identically word for word what was said to him?

THE COURT: The Court would like to know who said it.

MR. PAYNE: I will get to it in just one minute, your Honor. I am mindful of that.

Q Can you recall identically word for word?

A I think I can recall what was said.

Q Yes or no?

A Yes.

Q All right. Now, who said it?

A The stenographer.

Q Now, tell us what he said.

A "Richard Chilton, you are arrested and may be charged with the crime of carrying concealed weapons. The law gives you the right to make a statement if you so desire. Anything that you say may be used against you at the time you are

brought to trial. Now that you know these facts, do you care to make a statement?"

Q All right. Was this information then placed on the typed paper?

A That's right.

Q Do you know what the defendant's response was to that?

A Yes.

Q What was his response to that?

A Yes, I found this -- I found these two guns --

MR. STOKES: I am going to object.

THE COURT: Objection sustained.

Q He did respond?

A That's right.

Q Was his response typed out?

A He said he --

Q Was his response typed out?

A That's right.

Q Was it taken down?

A That's right.

Q Were there some more questions asked of him?

A That's right.

Q And those questions --

A No -- well, he gave, he says yes and then he went on --

Q Were his answers taken down?

A And without any questions being asked he continued.

Q All right. After he continued were there some more questions asked of him?

A Yes.

Q Were those questions typed down?

A That's right.

Q Did he respond or did he answer those questions?

A To my recollection he answered some of them, yes.

Q And were those answered put down?

A That's right.

Q After the completion of the procedure that you have just described to us, the taking down of the questions and the answers, what happened next if anything as far as you can recall?

A Well, he is given a copy of this and asked to read same.

Q Was that done in this case?

A It sure was.

(State's Exhibit 2 was marked for identification by the reporter.)

Q Handing you what has been marked for identification as State's Exhibit 2, can you identify State's Exhibit 2? Just yes or no?

A Yes.

Q What is State's Exhibit 2?

A This is a statement taken from Richard Chilton by the stenographer.

Q Were you present when this statement was taken?

A It was.

Q And is this the information that you had reference to in your previous testimony a moment ago?

A It was.

Q Detective McFadden, I believe that you testified that at the completion of the questions and answers, that a copy was given to the defendant to read?

A That's right.

Q Was State's Exhibit 2 given to the defendant Chilton to read?

A That's right, yes.

Q Did he read State's Exhibit 2?

A He did.

Q Were there any questions asked of him after so reading State's Exhibit 2? Yes or no?

A Yes.

Q What question, if you recall, was asked of him after reading State's Exhibit 2?

A Asked him if the above statement was true.

Q Go ahead.

A And would he like to sign the same.

Q Did the defendant Chilton respond to that statement, to that question?

A He refused to sign it and stated he would like to see

his attorney before he signed it.

Q Did he sign it?

A No.

Q Are there any signatures appearing on State's Exhibit 2?

A Any signatures?

Q Yes.

A My signature, Martin McFadden, Detective John Siphin, and Owen who was the stenographer.

Q In what capacity do those signatures appear thereon?

A What do you mean in what capacity? As policemen, we are all police officers.

MR. PAYNE: All right, Detective
McFadden.

For whatever value, I will offer State's
Exhibit 2.

MR. STOKES: Objection.

MR. PAYNE: Your Honor, perhaps
may I suggest at this time -- it is 20 minutes to 12 --
I do have another matter that I would like to present
or take up with the Court before the lunch hour, and
perhaps this may be a very convenient place to recess
at this time. I will like to so suggest to the Court,
that is, recess this matter, not recess the Court.

THE COURT: We will recess this
matter. You have no objection, Mr. Stokes?

MR. STOKES: No objection,
Judge.

THE COURT: And we will take
up this question when we resume at 1:45.

(Thereupon an adjournment was taken to 1:45 P.M.,
Tuesday, September 29, 1964, at which time the fol-
lowing proceedings were had:)

- - -

TUESDAY AFTERNOON SESSION, 1:45 P.M., SEPTEMBER 29, 1964

THE COURT: Will you read the
last question?

(Record was read by the reporter.)

THE COURT: And there was
an objection made by Mr. Stokes.

It is the considered opinion of this
Court, that the purported statement made by the
defendant, not signed, with the signatures affixed
thereto by the officers, is not admissible in ev-
idence, upon the reason that the detective in-
dicated that the questions as made were made to
the defendant by the officer, and that he answered
some of them.

In the light of the fact that this is
not a complete and full statement, the questions
and answers, it is not admissible.

MR. STOKES: If your Honor
please, we have this further motion, that all
testimony of this witness pertaining to this writ-
ten statement be stricken from the record.

THE COURT: Mr. Payne?

MR. PAYNE: Your Honor, I
think, I would urge the Court to overrule such a
motion, because certainly what the officer did in

connection with the investigation of this matter, he is testifying that he did as a matter of his personal acts, and is admissible into the evidence of this case.

THE COURT: Mr. Payne, isn't this statement also in connection with the investigation of the defendant?

MR. PAYNE: I am sorry, I did not hear the Court.

THE COURT: Isn't this statement, purported statement which the Court has refused to be admitted in evidence --

MR. PAYNE: Correct.

THE COURT: -- also in connection with the investigation?

MR. PAYNE: Is it in connection with the investigation?

THE COURT: Yes. No formal charge had been made against the individual at the time of this statement?

MR. PAYNE: Oh, yes, I would beg to differ with the Court on that, because the very first paragraph of the statement would speak for itself, that the crime of carrying a concealed weapon was to be charged here.

THE COURT: Was the charge actually made even though it is contained in the statement? There is no testimony of that in the statement which the Court has refused to allow.

MR. PAYNE: Your Honor, I cannot answer the Court's question because I honestly don't know.

THE COURT: I admire your honesty.

MR. PAYNE: I have no objection to the Court --

THE COURT: There has been no testimony by the officer that at the time he conversed, at least, let me put it to you in this fashion, Officer McFadden stated that he conversed with the defendant orally, and asked him matters pertaining to the situation, and he related the answers given to him by the defendant. Is that correct?

MR. PAYNE: That is correct.

THE COURT: That he immediately thereupon took him down to the room for the statement to be reduced to writing.

If I am incorrect you correct me.

MR. PAYNE: Yes, for a

statement to be reduced to writing. All right.

THE COURT: I must state in this connection therewith that the question was asked by you of the officer, "Did you have any conversation with the defendant?" and there was an objection and I overruled the objection and I said he may answer yes or no.

Is that correct?

MR. PAYNE: Yes. Now, before the Court proceeds, let me point out to the Court that the offense charged here of course is one of carrying concealed weapons, but after the establishing of the corpus delicti of that offense, the illegal carrying of the weapon, after that has been established as a matter of fact or law, that then any conversation which is given by the defendant is admissible into the evidence here under that rule in Ohio.

THE COURT: Well, I will go along with you on the first part of your statement.

MR. PAYNE: At this point -- I am sorry, I did not mean to interrupt the Court.

THE COURT: I say, I will go along with you on the first part of your statement, of the officer that there are certain circumstances

where there is reason to believe that there was a pointed situation, there were activities, as far as the officer is concerned, indicating that the activities of the individual were not normal, and that he suspected, based upon those activities, that a crime was about to be committed.

And I felt under those circumstances that the officer had a right to stop and frisk these individuals, which he did and he tapped them for purpose of determining whether or not these individuals had any weapons or instruments that might bring harm to him, and I firmly believe that I am right in that particular position.

Perhaps lawyers or courts may disagree with me, but it is for the protection of the officer's life, and he had that right, and in doing so he discovers a weapon which is in violation of law.

There is a commission of a crime by an individual, therefore he has the right to arrest the individual, because there is a violation of a felony law in this case, carrying a concealed weapon, which he had a right to charge him, and he brought him down to police court or wherever they brought him to the station, and the question comes to my

mind had the officer the right to ask the individual --

MR. PAYNE: Can I interrupt
the Court before the Court proceeds?

THE COURT: Yes.

MR. PAYNE: Because I say to
the Court, the motion relates then to the striking
from the record testimony of conversation which
the officer had with the defendant.

At this point, your Honor, there is
no question before the Court which would sustain
such a ruling. There is no question, or any claims
been made of a violation of this man's rights in
any manner or in any way thus far, except as it
may relate to the original motion to suppress.
Now, up to this point there is not.

Now, if the Court had in mind, having
in mind that I indicated to the Court, that once
the corpus delicti is established, that conversa-
tion with the defendant is admissible into the
evidence. Now, there can be possibly exceptions
to that, but those exceptions must be forthcoming
from the evidence, and under those circumstances
I would think that unless we hear more from defense
counsel, or evidence to this effect, that the Court
must overrule the motion or hold the motion in

abeyance.

THE COURT: Let me say this to you, I will expect counsel Mr. Stokes to present his side, too, but I am merely raising some questions as far as this court is concerned.

There is no question in my mind that before an arrest is made, for purposes of investigation, that a police officer has the right to ask questions of an individual, where there are proper circumstances.

But the question that I am raising, once that an arrest has been made against an individual, what is the difference of taking an oral statement of the individual, and not advising him of his rights, or taking a written statement and saying to the so-called suspect or the person charged, "We are telling you about your constitutional rights before we reduce this statement to writing." What is the difference?

MR. PAYNE: Your Honor, at this time in the state of this case, I respectfully beg leave of this Court not to answer that question, because there has been no such claim made or no testimony or evidence as to such.

Therefore, I say to the Court we can't

decide that question, that on the basis of the evidence as it stands at this point, the motion must, one, be overruled in the absence of any specific claim by counsel for the defendant, or the motion must be held in abeyance until such time as evidence is produced here to raise the question.

THE COURT: Mr. Stokes? Do I make my position?

MR. STOKES: I think so, Judge. My motion at this time has been directed to the oral testimony in the record, which the Court has just refused to accept written corroboration of. All of the questions and answers which are on that statement were asked of this witness on the witness stand, and it stands in the record now as his oral testimony.

Now, this Court has refused the prosecutor's offering of this statement, and this is merely written evidence of the oral evidence, and I am saying that it must go out.

You can't leave one in, otherwise the Court might as well accept that in.

Now, I am not going back at this point. The Court overruled me when I said, when I entered my objection to the oral conversation.

Now I will have some questions to direct with reference to that on my cross-examination, and it may well be that I will have a motion for reconsideration thereof also.

But right now I am just going back to any oral testimony relating to this statement.

MR. PAYNE: May I say to the Court, the questions which the officer testified to as the oral conversation, were not taken from State's Exhibit 2. I did not read those questions from State's Exhibit 2.

THE COURT: You did not read -- unless I am incorrect, as I recall the officer's testimony, you asked him a question, "Did you have any conversation with the defendant?" and he said, "Yes."

There was an objection and I overruled the objection.

"Will you relate the conversation?" and he related the conversation.

Then you stated to him, "What was done next?"

MR. PAYNE: Right.

THE COURT: He says, "I took him down to the room to get his statement down in

writing."

MR. PAYNE: And we are in accord on what happened. on what transpired. But up until -- I agree with the Court's ruling on ruling the statement out.

THE COURT: I thought we had the statement in.

MR. PAYNE: Beg pardon?

THE COURT: Don't we actually have the statement in?

MR. PAYNE: We have oral statements made to the officer in the evidence. We do not have the written statement in, because I feel that the Court has properly ruled the written statement out. because there are certain procedures which are necessary and rules which are above and beyond that required for the admission of a written statement. more so than are required for the admission of an oral statement.

We have nothing in the evidence to rule out the oral statements at this point.

MR. STOKES: Judge, may we do this, we will withdraw our motion at this time, and if Mr. Payne is finished with his witness I have some cross-examination.

MR. PAYNE: I have no objection
to that either.

THE COURT: I believe we were
in the process of cross-examination.

MR. PAYNE: No. I had just
offered --

MR. STOKES: He had just fin-
ished and then he had made his offer.

THE COURT: All right. I will
hold this in abeyance.

- - -

THEREUPON the witness, Detective Martin McFadden, resumed the witness stand and was further examined and testified as follows:

CROSS-EXAMINATION OF DETECTIVE MARTIN McFADDEN

By Mr. Stokes:

Q Mr. McFadden, this morning you made this statement in answer to a question put to you by the prosecutor, "From my observation I felt as though they may pull a stick-up."

Do you recall that, sir?

A Yes, I did.

Q Now, you testified in this matter on the motion to suppress, didn't you?

A I believe so.

Q And do you recall, sir, that I asked you this question, "Did you when you approached these men know that they had guns on them?" and your answer was substantially this, "I had no idea in the world that they had any guns on them."

Do you recall that answer, sir?

A I might have said that, yes.

Q So then are we to understand or not that when you approached these men you did not have any idea that they had guns on them?

A Well, I will give you my version this way --

Q Wait a minute, Mr. McFadden. I am not asking for any

version. If you can answer that question, fine, and if you can't I will put another question.

A Put that question to me again. What was the question again?

THE COURT:

Read the question.

(The last question was read by the reporter.)

A I didn't know.

Q During your tenure as a police officer, during your 39 years as a police officer, how many men have you had occasion to arrest when you had observed them and felt as though they might pull a stick-up?

A To my recollection, I wouldn't know, I don't know if I had -- I don't remember of any.

MR. STOKES:

Will the reporter

read that answer for me?

(Last answer was read by the reporter.)

Q You don't remember of any, is that the last part?

A That's true.

Q Your work, you are assigned to work as a detective dealing with stores and what, officer?

A Pickpockets, checks.

Q When was the last time you arrested an armed robber?

A I have no idea.

Q Would it be fair to say that you have never arrested one?

A I have several.

Q Now, after you had gotten these men to the police station, how long was it before you had a conversation with them?

A I believe it was the next morning.

Q This then would be the first day of November?

A I believe so, yes.

Q Do you recall where it was that you saw Chilton and had this conversation with him?

A I believe it was in the morning.

Q Where would this conversation have taken place?

A It was up in jail before I took him down for a statement.

Q At that time what charge if any was pending against Chilton?

A They were held for investigation.

Q And they had been held for investigation since the previous day when you had arrested them on Euclid Avenue, isn't that correct?

A That's right.

Q Now, you tell us when you went in jail to see Chilton what was the first thing you said to him?

A That would be hard. I don't remember what the first thing was I said to him.

Q When a man is under investigation such as Chilton was under, is he permitted to consult with an attorney?

A Sometimes.

Q Do you know whether Richard Chilton was permitted to consult with an attorney?

MR. PAYNE: Objection.

THE COURT: What is the basis of your objection?

MR. PAYNE: The basis of my objection is the question as it is phrased -- the question as it is phrased, the form of it itself.

THE COURT: Well, I mean, I wanted to ask you what is your reason, if it coincides with the Court's?

MR. PAYNE: If this is what the Court is thinking, this is the reason.

MR. STOKES: The form?

THE COURT: It is the form and in light of the fact that there should be some foundation laid pertaining to the question of attorney representation before you ask this question, was he permitted to consult with an attorney. There were a lot of things that happened before.

MR. STOKES: I will withdraw the question, Judge, and try to lay the foundation properly.

Q After his arrest Chilton was taken to the police station by you?

A Pardon?

Q Chilton was taken to the police station by you after his arrest, wasn't he?

A I believe I accompanied him, went in with him. I am pretty positive I went in with the wagon, yes.

Q You didn't see him again until the following morning, is that correct?

A Yes, the following morning.

Q When you went in to talk with him that morning, did you make any inquiry of him as to whether or not he had seen a lawyer?

MR. PAYNE: Objection.

THE COURT: Will you read the question?

(Last question was read by the reporter.)

THE COURT: You may answer.

A No.

Q You related for Mr. Payne some statement that is read to a defendant before you take a statement where you say, "Now, Richard Chilton, you may be charged with the crime of carrying a concealed weapon," et cetera. When do you recite this to a defendant?

A Before he is asked any questions or asked to make a statement.

THE COURT: Are you talking

about a written statement?

THE WITNESS: That's right.

Q Now, when you went up to talk with Richard Chilton that morning, before you started asking him question, did you or some other police officer make such a statement to him?

A That is made down in the statement room.

Q So then the conversation, in the conversation which you held with Richard Chilton in the jail, neither you nor any other police officer in your presence gave him any advice as to his constitutional rights, did you?

A That's correct, no advice at all in jail.

Q You just start talking with him?

A That's right.

Q And he starts answering your questions?

A That's right.

Q And at that time you are still investigating a crime, aren't you?

A That's right.

Q And at that point Richard Chilton was being accused of carrying a concealed weapon, wasn't he?

MR. PAYNE: Objection.

THE COURT: Objection sustained.

Q Were you accusing Richard Chilton of a commission of a crime at the time that you talked with him that morning?

MR. PAYNE: Objection.

THE COURT: Objection sustained.

MR. STOKES: I have no further questions at this time, your Honor. I renew my motion to -- do you want --

MR. PAYNE: Yes, I want --

THE COURT: You may renew your motion when Mr. Payne finishes.

- - -

RE-DIRECT EXAMINATION OF DETECTIVE MARTIN McFADDEN

By Mr. Payne:

Q Mr. McFadden, the following morning when you went to the jail to talk to Richard Chilton, am I to understand at that time he was being held for investigation?

A That's right.

Q Holding a person for investigation, as a part of that investigation do you talk with the person ever?

A That's right.

Q Did you talk with this defendant as a part of your investigation?

A Yes, I did.

Q When you went to the jail that morning, did Richard Chilton tell you he had an attorney?

A No, to my recollection, no.

Q Did he ask of you for an attorney?

A To my recollection, no.

Q Did he ask you to make a phone call for the purpose of securing an attorney that morning?

A To my recollection, no.

Q Did you at any time deny him the right to see any attorney?

A To my recollection, no.

Q Did you at any time deny him the right to make a phone call?

A To my recollection, no.

Q Detective McFadden, you recited some language for the Court that was given, that was spoken in the presence of Richard Chilton, that he was arrested and may be charged with the crime of carrying a concealed weapon, and the law gives him the right, do you recall that language?

A Yes, I do. That's right.

Q Is that language said to the defendant during the course of the investigation, or at the time that he is to be charged with the commission of a particular crime?

MR. STOKES: Objection.

THE COURT: He may answer if he knows.

A This statement is taken before he is charged.

Q Now listen to the question. Would you repeat the

question for him, Mr. Reporter.

(Following question was read by the reporter:)

"Is that language said to the defendant during the course of the investigation, or at the time that he is to be charged with the commission of a particular crime?"

THE COURT: We are talking about this statement, this State's Exhibit 2.

Q When that language is stated to and was stated to the defendant, was the decision to charge the defendant with a concealed weapon determined at that time?

MR. STOKES: Objection.

THE COURT: Objection sustained.

Q Do you have in mind the language that was stated to the defendant, is that correct?

A Yes.

Q Was that language said to the defendant during the course of the investigation or when the defendant is to be charged with the crime?

A When he is brought down from jail this is typed, the clerk, the stenographer types --

Q You have to answer the question as I put it, Detective McFadden.

A Before he is charged.

Q Is he then to be charged with a crime, Detective

McFadden, when that language is stated to him?

A No.

Q He is then not to be charged with a crime?

A We specifically state in there that you may be charged with a crime of --

Q While the defendant then is under investigation, this language is not then stated to him, is that correct?

MR. STOKES: Objection to the
prosecutor testifying.

THE COURT: Objection sustained.

Q Let me put it this way: While he is under investigation, then, is this language stated to him?

A While he is under -- we don't have any idea when the man will be charged, how he is going to be charged, until we present the facts to the prosecutor.

Q Agreed.

A The statements and facts.

MR. STOKES: It was not very
responsive.

MR. PAYNE: Your witness.

MR. STOKES: A good time to
turn him over.

THE COURT: Anything further,
Mr. Stokes?

MR. STOKES: Yes, Judge.

RE-CROSS EXAMINATION OF DETECTIVE MARTIN McFADDEN

By Mr. Stokes:

Q Detective McFadden, a man is under investigation as you have put it here in this case, that man is not at liberty to phone a lawyer, is he?

MR. PAYNE: Your Honor, I am going to object.

THE COURT: On what basis?

MR. STOKES: You have been into this about wanting a lawyer and all of that.

MR. PAYNE: The Court I believe asked me on what basis. Number one, your Honor, the officer has previously testified that he did not prohibit this man from calling, that is number one.

Number two, on previous cross-examination the question was asked of the witness as to whether or not the person under investigation had an opportunity to call.

I believe the answer, if I recall correctly, was "Not in all cases."

MR. STOKES: I don't think that was.

MR. PAYNE: I believe it was, from the detective, from the officer. It is in the

record, your Honor.

THE COURT: Mr. Payne, let me put it to you this way: You went into it extensively on re-direct examination pertaining to what the officer does pertaining to the retention of counsel.

MR. PAYNE: I will accept the Court's ruling.

THE COURT: And we haven't got a jury here, and the Court has indicated under the circumstances that it will be a little bit more lenient. All right.

By Mr. Stokes:

Q Now, Detective McFadden, isn't it a matter of procedure in the police department, that when a man is charged with investigation in connection with a crime, that he is not permitted to make a phone call until after he has been charged?

MR. PAYNE: I must object.-- I am sorry, your Honor, I must enter an objection as to this, because we are not concerned with the procedure. We are concerned with what happened in this case.

THE COURT: The Court will overrule your objection. If he knows he may answer yes or no.

Do you know what the procedure is?

A In some cases they are allowed to make a phone call.

Q Do I understand your answer to be that a man under investigation over there is permitted to make a phone call?

A I have had people in for investigation and a lot of them make phone calls.

Q Was Richard Chilton permitted to make a phone call?

MR. PAYNE: Objection.

THE COURT: Objection sustained.

Q While Richard Chilton was under investigation was he permitted visitors?

MR. PAYNE: Objection.

A Was he permitted visitors?

THE COURT: Just one second, please. I will sustain the objection as to the nature of the question. There is no foundation for that particular question.

MR. STOKES: Judge, I would think these questions would relate directly back to the questions --

THE COURT: Let me give you the reason for my ruling in case you are perplexed.

MR. STOKES: I am perplexed, Judge.

THE COURT: Now you have asked

a question, "Was he permitted to have visitors?"

First, there must be preliminary to that situation the establishment as to whether or not he asked for permission to have visitors, or whether or not visitors asked him to be permitted to visit the gentlemen.

In light of the fact that you have not laid the foundation properly, the Court has sustained the objection.

Proceed.

MR. STOKES: Judge, I am just wondering, even in light of the Court's ruling here, I am thinking that this being cross-examination --

THE COURT: There is no basis for the question that you asked under cross-examination that has any relation to what has been asked on direct or re-direct.

MR. STOKES: All right, we will put it this way.

By Mr. Stokes:

Q Did Mr. Chilton ask you to see a lawyer?

A To my recollection, no.

Q He did tell you he had not seen a lawyer, didn't he?

A Pardon?

Q He did tell you he had not seen a lawyer, didn't he?

A The only time a lawyer was mentioned was when we asked him to sign the statement and he says wouldn't sign it until he seen a lawyer.

Q And was this your first knowledge of the fact that he had not seen a lawyer?

A I imagine so.

Q At the time you went upstairs to talk to him that morning, you had not applied yet for papers against him, had you?

A That's right.

Q But having made the arrest of this man, at that time it was your intention, was it not, to present evidence that would connect him with carrying a concealed weapon?

MR. PAYNE:

Objection.

THE COURT:

You may answer

yes or no.

A Yes.

MR. STOKES:

Thank you, sir.

That is all.

THE COURT:

Anything further,

Mr. Payne?

MR. PAYNE:

I think that is

all, your Honor.

THE COURT:

You are renewing,

I presume, your motion?

MR. STOKES: I am renewing my motion as it relates to oral conversations, both the oral conversations prior to the statement, and oral conversations relating to the statement.

THE COURT: Well, the Court has already ruled, you understand, on the written statement.

But in light of the fact that the evidence before me is clear and convincing that statements were made to the officer during the course of the investigation when he was held on a charge of suspicion, is that correct, that you mentioned, I believe, for investigation?

MR. PAYNE: Held for investigation.

THE COURT: That the oral statements that he gave and which he has related, which has been related by the officer, was for the purpose of carrying out the investigation to determine what if any charge was to be placed as against the defendant. I don't believe he asked about any other case.

So therefore it is Court's ruling that if those statements -- I may say this furthermore,

for the record, that if the oral statements were made just prior to the charge after the investigation was completed, and just before reducing the statement to a written charge, but after the investigation was completed, the Court would have had to hold the same as I held about the written statement.

But in light of the fact that the evidence as I have stated, and I repeat again, was obtained from the defendant during the course of the investigation, and prior to determination as to a likely charge to be placed against the defendant, the Court will overrule your motion, exception may be noted for the record.

MR. PAYNE: If it please the Court, I don't know whether I offered State's Exhibit 1 and 1-A into the evidence, and whether they were received or not?

THE COURT: To be honest, I don't recall myself.

MR. PAYNE: Show that I offer them.

THE COURT: Any objection?

MR. STOKES: What exhibit is that, the gun?

MR. PAYNE: The gun and the shells.

MR. STOKES: We would object to the introduction of both of them.

THE COURT: They may be received, and exception to the defendant.

MR. PAYNE: That is all, your Honor. The State will rest its case.

- - -

THEREUPON THE STATE OF OHIO RESTED

- - -

MR. STOKES: May we have the record show we move this Court for a directed verdict of acquittal for the defendant?

THE COURT: State the basis for your motion.

MR. STOKES: We base it, your Honor, upon the illegality of the arrest, and the fact that having renewed our motion, and all of the evidence being before this Court with relation to suppressing the evidence in this case, that we feel that the Court at this point is in a much better position to grant the motion, and consequently we therefore direct this motion to the Court.

THE COURT: Mr. Stokes, I
want to ask you one question.

MR. STOKES: Yes, your Honor.

THE COURT: If the Court is
correct in its position on the stopping and frisking,
would you be serious in asking based upon the
statutory provision --

MR. STOKES: Let me understand
you, Judge.

THE COURT: If the Court were
correct in its position that the stopping and frisk-
ing was perfectly proper, and not in violation of
the Fourth Amendment of United States Constitution,
would you be serious in a motion for a directed
verdict based upon the evidence and the statute?

MR. STOKES: No, I would not
be, Judge.

THE COURT: So in light of
the fact that the Court has already ruled on the
previous motion to suppress the evidence, with due
exception, the Court will now overrule your present
motion for a directed verdict, and exception to
the defendant.

MR. STOKES: Show an exception.

- - -

11

THEREUPON Richard D. Chilton, defendant herein, to maintain the issues on his part to be maintained, offered himself as a witness in his own behalf, who, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF RICHARD D. CHILTON

By Mr. Stokes:

Q What is your name?

A Richard D. Chilton.

Q Where do you live?

A 16101 Lotus Drive.

Q Keep your voice up. The reporter has to take everything down that you say.

How old are you?

A Twenty-seven.

Q Where were you born?

A Bell Vernon, Pennsylvania.

Q How long have you been in Cleveland?

A Since '46, 1946.

Q Are you married or single?

A Married.

Q Do you live with your wife?

A No, we are separated.

Q How long have you been separated?

A 1960.

THE COURT:

What was that,

1962?

THE WITNESS:

1960.

THE COURT:

1960.

Q Where is she now?

A In California.

Q Do you have any children?

A No.

Q When did you get married?

A In '57, 1957. 1956.

Q 1956?

A Yes.

Q Now, when was the last time that you had a regular job?

A Well, I worked a regular job in Chicago, at the R. L. Demion Company, a printing company. That was in 1962.

Q What type of work were you doing for this company?

A Printer.

Q You are a printer?

A Yes.

Q How long have you been in the business of printing?

A I started printing in 1953 and worked until '61, the Grand Printing Company as a printer here in Cleveland.

Q Do we understand that you worked for this one company from 1953 to 1961?